DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200221061

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Significant Index No.: 401.06-00

T:EP:RA:T2

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LEGEND

Decedent	=	XXXXXXXXXXXXXXXXXX
Taxpayer A	=	XXXXXXXXXXXXXXXXXX
Taxpayer B	=	XXXXXXXXXXXXXXXXXX
Taxpayer C	=	XXXXXXXXXXXXXXXXXX
Taxpayer D	=	XXXXXXXXXXXXXXXXXX
Taxpayer E	=	XXXXXXXXXXXXXXXXXX
County I	=	XXXXXXXXXXXXXXXXXX
State J	=	XXXXXXXXXXXXXXXXXXX
Trust M	=	XXXXXXXXXXXXXXXXXXX
Trust N	=	XXXXXXXXXXXXXXXXXXX
Plan Account V	=	XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX
IRA Y	=	XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX
IRA Z	=	XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXX
Custodian M	=	XXXXXXXXXXXXXXXXXXX

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200221061

Dear XXXXXX

This is in response to your request for a private letter ruling dated July 5, 2001, as supplemented by correspondence dated December 6 and December 10, 2001. In support of your request, you have submitted the following facts and representations.

In 1987, Decedent owned Plan Account V, a qualified retirement plan account, with a balance of approximately $ and an Individual Retirement Account with a balance of approximately $ At that time, Decedent's estate was the sole beneficiary of the IRA and the Plan Account V. In January 1988, Decedent received a complete distribution from the Plan Account V that he rolled over tax-free into IRA Y, a separate IRA rollover account.

Decedent attained the age of 70 ½ in 1987. Decedent's required beginning date under section 401(a)(9)(C) of the Internal Revenue Code (Code) for purposes of required minimum distributions was April 1, 1988. On , , prior to his required beginning date, Decedent named his three daughters - Taxpayers A, B and C - as designated beneficiaries of IRA Y. Minimum required distributions were made to Decedent through calendar year 1994 over the joint life expectancy of Decedent and the oldest named designated beneficiary, Taxpayer A.

On August 26, 1994, Trust M was created by written agreement, executed by Decedent as sole settlor and as one of the co-trustees. On September 20, 1994, Decedent transferred IRA Y to IRA Z and executed a new beneficiary designation form, naming Trust M as the beneficiary of IRA Z. You represent that on or about September 20, 1994, Decedent furnished a complete copy of Trust M to Custodian M, the custodian of IRA Z. Beginning in 1995, Decedent began to receive annual distributions from IRA Z calculated using his individual recalculated life expectancy. Annual distributions continued to be made from IRA Z through calendar year 2000.

Decedent died on . Decedent's Last Will and Testament (Will) gives his residuary estate to Trust M. Residuary estate, as defined in Decedent A's Will, "means all property in which I may have any interest that is disposed of under the provisions of this Will". Decedent's Will was admitted to probate in County I of State J on .

Trust M provides that all assets which are subject to the terms of this agreement, shall be held, administered, and distributed as an irrevocable trust. Paragraph 1-4.3 of Trust M named Decedent as the sole beneficiary of Trust M during his lifetime. Paragraph 1-5.1 of Trust M specified that Trust M would terminate upon the death of Decedent, and that the trust estate would be disposed of as specified in paragraph 1-5.2 of Trust M.

Section 112.052 of the State J Property Code provides that "a trust terminates if by its terms the trustee is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust".

Section 1-5.2 of Trust M provides that the trust estate shall be disposed of as follows: a specific bequest of $ to Taxpayer D; a specific bequest of $ to Taxpayer E; certain partnership interests to Decedent's descendants who survive him; a gift of Decedent's principal residence and $ to Trust N; and the remaining trust estate to Decedent's descendants. Decedent's descendants as defined by Article 1-2 are his adult daughters, Taxpayers A, B and C.

Documentation submitted shows that Decedent's total gross estate was $ including $ of liquid assets such as stocks, bonds, cash, notes, life insurance proceeds, and IRA Z. Cash required for administration expenses, debts, and marital and charitable bequests totaled $ Thus, over $ of liquid assets, including IRA Z, remained in Trust M for distribution to Taxpayers A, B and C as residuary beneficiaries of Trust M, after satisfaction of bequests to Taxpayer D, Taxpayer E, and Trust N. The value of Decedent's IRA Z at his date of death was approximately $ The IRA Z proceeds were not applied to the payment of marital and charitable bequests, debts, or administration expenses required to be funded by Trust M. Article 4-7 of Trust M, <u>Protection and Collection of Proceeds From Life Insurance and Employee Benefit Plans</u>, provides, in pertinent part, at section 3, that a third party shall have no right to enforce any claim against assets distributed under the provisions of this Article 4-7. Employee benefit plans as described in Article 4-7 includes individual retirement accounts, such as IRA Z. Further, you have asserted that, under State J statutes, neither Taxpayer D nor Taxpayer E had the right to draw on the assets of IRA Z for their interests. The remaining $ of liquid assets has been partially distributed and will continue to be distributed in equal portions to Taxpayers A, B and C over the balance of Trust M's administration period.

Based on the foregoing facts and representations, you request the following rulings:

(1) Trust M satisfies the requirements of Proposed Regulations section 1.401(a)(9)-1, Q&A D-5 such that Taxpayers A, B and C, beneficiaries of Trust M with respect to Trust M's interest in IRA Z, may be considered designated beneficiaries of IRA Z for purposes of determining the distribution period under section 401(a)(9) of the Code;

(2) Decedent's daughters, Taxpayers A, B and C, are the beneficiaries of Trust M's interest in IRA Z and are the sole individuals whose life expectancies need to be considered for purposes of determining who is the designated beneficiary of IRA Z under section 401(a)(9) of the Code; and

(3) For purposes of satisfying the minimum required distribution rules of section 401(a)(9) of the Code, made applicable to IRAs pursuant to section 408(a)(6) of the Code, distributions from IRA Z to Taxpayers A, B and C as beneficiaries of IRA Z, may be distributed based on the life expectancy of Taxpayer A, the oldest beneficiary.

Code section 408(a) defines an IRA as a trust, which meets the requirements of, sections 408(a)(1) through 408(a)(6). Section 408(a)(6) of the Code generally provides that under regulations prescribed by the Secretary of the Treasury, rules similar to the rules of section 401(a)(9) of the Code and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Section 1.408-8, Q&A A-1 of the Proposed Income Tax Regulations ("Proposed Regulations") states that individual retirement plans are subject to the distribution rules for qualified plans provided in section 401(a)(9) of the Code and section 1.401(a)(9)-1 of the Proposed Regulations.

Section 401(a)(9)(A) of the Code generally provides that a plan will not be qualified under section 401(a) unless that plan provides that the entire interest of each employee (i) will be distributed to such employee not later than the required beginning date, or (ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the joint lives of such employee and a designated beneficiary, or over a period not extending beyond the life expectancy of such employee (or the joint life expectancies of such employee and a designated beneficiary).

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee (IRA holder) attains age 70 ½.

Section 401(a)(9)(B)(i) of the Code provides that, where distributions have begun over life expectancies in accordance with subparagraph (A)(ii), a trust shall not constitute a qualified trust under this section unless the plan provides that, if the employee dies before his/her entire interest has been distributed to him/her, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Section 401(a)(9)-1 of the Proposed Regulations, Q&A D-3, provides that for purposes of calculating the distribution period for distributions that begin prior to death, the designated beneficiaries will be determined as of the plan participant's (IRA holder's) required beginning date.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-2(a)(1), provides, in pertinent part, that designated beneficiaries are only individuals who are designated as beneficiaries under the plan. In general, it provides that an individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-5 provides, in part,

A. (a) Pursuant to D-2A of this section, only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code. Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D-5A are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the employee trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii). If, as of any date on or after the employee's required beginning date, a trust is a named beneficiary of the employee and the requirements in paragraph (b) of this D-5A are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for calendar years beginning after that date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date).

(b) The requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument within the meaning of D-2.

(4) The documentation described in D-7 of this section has been provided to the plan administrator.

(c) In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

Section 1.401(a)(9)-1 Q&A D-6 of the Proposed Regulations provides, in part, that in the case in which a trust is named as the beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv) if the requirements in paragraph (a) of D-5 (above) are satisfied as of the date of the employee's death, or in the case of the documentation described in D-7 of this section, by the end of the ninth month beginning after the employee's death.

With respect to your first and second ruling requests, Decedent named Trust M as the beneficiary of IRA Z after his required beginning date. However, if the requirements of section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-5A (b) are met, distributions made to a trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the employee trust will be treated as having been designated as beneficiaries for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code.

Trust M is a valid trust under the laws of State J. Trust M, by its terms, provides that all assets subject to the terms of the trust agreement shall be held, administered and distributed as an irrevocable trust. In addition, Trust M, except for the period of time needed to wind up the affairs of the trust, by its terms, terminated upon Decedent's death. The IRA Z account balance was not used to pay any expenses or specific bequests of the Decedent. Taxpayer A, Taxpayer B, and Taxpayer C were referenced and identifiable in Trust M as the beneficiaries of Decedent's residuary trust estate. Finally, you represent that a complete copy of Trust M was given to Custodian M within nine months of the Decedent's death in accordance with section 1.401(a)(9)-1 Q&A D-7 (b) of the Proposed Regulations.

Based on the above, we conclude, with respect to your first and second ruling requests that Trust M is a "see-through" trust described in section 1.401(a)(9)-1 of the Proposed Regulations, Q&A D-5 and D-6 as discussed above and is a named beneficiary of IRA Z as of the date of Decedent's death and that Taxpayer A, Taxpayer B, and Taxpayer C, the beneficiaries of Trust M, with respect to Trust M's interest in IRA Z, may be considered designated beneficiaries for purposes of determining the distribution period for payment of benefits from IRA Z under section 401(a)(9) of the Code, and that Taxpayer A, Taxpayer B and Taxpayer C are the individuals whose life expectancies need to be considered for purposes of determining the distribution period under section 401(a)(9).

With respect to your third ruling request, Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-5, provides, in pertinent part, that if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A F-3A provides, in part, that, with respect to individual account plans from which distributions have commenced prior to the employee's death, post death distributions will comply with the "at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) rule" if said distributions are made in accordance with Q&A F-1.

Section 401(a)(9)(D) of the Code permits an employee and his/her spouse to recalculate their life expectancies annually. Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-8 (a), provides guidance on how an employee's life expectancy is recalculated and provides that upon the death of the employee, the recalculated life expectancy of the employee (or the employee's spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-8 (b), provides guidance on calculating the applicable life expectancy when the employee's life expectancy is recalculated and the life expectancy of the employee or his/her beneficiary is not being recalculated. It provides, in relevant part, that if the designated beneficiary is not the employee's spouse and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint life and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows:

The beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year (described in section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-1) reduced by one for each calendar year, which has elapsed since that calendar year. The age (rounded if necessary to the higher age) in Table V of section 1.72-9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in paragraph (a), upon the death of the employee, the recalculated life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-1 (a), provides generally, that for required distributions under section 401(a)(9)(A) of the Code, life expectancies are calculated using the employee's (and the designated beneficiary's) attained age as of the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attains 70 1/2.

Section 1.401(a)(9)-1 of the Proposed Regulations, Q&A F-5, provides, generally, that in the case of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding any distribution calendar year.

Section 1.408-8 of the Proposed Regulations, Q&A A-5, provides that for purposes of determining the minimum distribution required to be made from an IRA in any calendar year, the account balance of the IRA as of the December 31 of the calendar year immediately preceding the calendar year for which distributions are being made will be substituted in section 1.401(a)(9)-1 F-1 for the benefit of the employee. The account balance as of the December 31 of such calendar year is the value of the IRA upon close of business on such December 31. However, for purposes of determining the minimum distribution for the second distribution calendar year for an individual, the account balance as of December 31 of such calendar year must be reduced by any distribution (as described in section 1.401(a)(9)-1 F-5(c)(2)) made to satisfy the minimum distribution requirements for the individual's first distribution calendar year after such date.

Because Decedent's life expectancy was being recalculated, upon his death, in accordance with Q&A E-8 (a) of section 1.401(a)(9)-1 of the Proposed Regulations, his life expectancy was reduced to zero as of the end 2001, the calendar year following the calendar year of his death. Although his benefit was paid in the form of a single life expectancy, upon his death, his life expectancy was not the last applicable life expectancy because he timely designated his beneficiary by his required beginning date in accordance with Q&A D-3 (a) of the Proposed Regulations. Therefore, pursuant to Q&A E-8 (b) of section 1.401(a)(9)-1 of the Proposed Regulations, for purposes of determining the minimum distribution in the calendar year after the death of Decedent, the applicable life expectancy is the life expectancy of the designated beneficiary as determined under that section. Decedent died on . Therefore, the calendar year after the death of Decedent, namely the calendar year ending December 31, 2001, is the date by which distributions must begin to be made from IRA Z to the beneficiaries thereof using the life expectancy of his designated beneficiaries.

Because Decedent named Trust M as his beneficiary of IRA Z and because Trust M is a trust that meets the requirements of Q&A D-5A (b) of the Proposed Regulations, the distributions from IRA Z made to Trust M will be treated as having been paid to the beneficiaries of Trust M, and as stated above, with respect to Trust M's interest in IRA Z, and the beneficiaries of Trust M will be treated as having been designated as beneficiaries of IRA Z for purposes of determining the distribution period under section 401(a)(9)(A)(ii) of the Code.

Since more than one individual was designated as a beneficiary with respect to IRA Z, pursuant to section 1.401(a)(9)-1 of the Proposed Regulations, Q&A E-5 (a)(1), the beneficiary who is the oldest and, who has the shortest life expectancy, will be the designated beneficiary for purposes of determining the distribution period under IRA Z.

Taxpayer A had the shortest life expectancy of the three designated beneficiaries on Decedent's required beginning date. Therefore, Taxpayer A is the designated beneficiary whose life expectancy will be used when determining the minimum distribution period under IRA Z for the calendar year commencing after the year of Decedent's death and for all subsequent years thereafter.

Thus, with respect to your third ruling request, we conclude that for purposes of satisfying the minimum required distribution rules of section 401(a)(9) of the Code, made applicable to IRAs pursuant to section 408(a)(6), distributions from IRA Z to Taxpayer's A, B, and C, who shall be treated as having been designated beneficiaries of IRA Z, may be distributed based on the life expectancy of Taxpayer A, the oldest beneficiary.

These rulings are based upon the assumption that IRA Z otherwise meets the requirements of section 408 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

If additional information is needed, please contact XXXXXXXXXXXXXX, T:EP:RA:T2, at XXXXXXXXXXXXXXXXX.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of letter ruling
Notice of intention to disclose